IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-01-2007

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION No.18667 of 2006

D.Kannan .. Petitioner

Vs.

1.The Director of Planning,
National Highways Authority of
India, No.6(Old No.44),
I Floor, 3rd Main Road,
Pon Nagar,
Tiruchirappalli-620 001.

2.The Competent Authority,
(Land Administration),
National Highways 45,
and District Revenue Officer,
Villupuram District.

3.The Special Tahsildar,
Land Acquisition,
No.22, Rajagopal Pillai Street,
4 Lane National Highway No.45,
Tindivanam.

4.Indirani Ammal .. Respondents

5.Vijaya Ammal
(RR.4 and 5 impleaded as per order
of the Court dt.13.7.2006 in
MP No.1 of 2006)

WEB COPY

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Mandamus, directing the respondents herein to disburse the compensation amount due to the lands acquired from the petitioner as per the Award made in Na.Ka.A.020/2003/NH45/Tindi. Dated 18.3.2006.

For Petitioner : Mr.T.R.Rajagopalan,
Senior Counsel for
Mr.T.R.Rajaraman

https://hcservices.ecourts.gov.in/hcservices/

For Respondents-1&2 : Mr.P.Wilson,
Asst. Solicitor General.

For Respondent-3 : Mr.V.Arun,
Government Advocate.

For Respondents-4&5 : Mr.R.Subramaniam

ORDER

The petitioner claims to be the owner of the lands of the extent of 2760 sq. metres in T.S.No.10/18-B, 600 sq. metres in T.S.No.10/19 and 233 sq. meters in T.S.No.10/22-A, in Kidangal Village, Tindivanam Taluk, Villupuram District. He claims to have purchased the said lands under various sale deeds dated 20.12.1990, 22.6.1992, 15.11.1994, 17.11.1994, 25.11.1994 and 21.8.1996. The petitioner was also issued with patta by the Zonal Deputy Tahsildar, Tindivanam in his proceedings RTR A6/133/2004 dated --.2.2004.

2. By a notification published in the Gazette of India No.858 S.O.1162(E) dated 24.11.2001, the Government of India appointed the District Revenue Officer, Villupuram, as the Competent Authority under Section 3(a) of the National Highways Act, 1956 (hereinafter called as the 'Act') for the purpose of acquiring lands for laying a bye pass road in National Highway No.45. The draft notification under Section 3A of the Act was approved by the Government in Government of India Gazette (Extraordinary) No.531 S.O.685(E) dated 14.6.2004 and the substance of the notification was also published in Tamil and English Dailies in accordance with Section 3A(3) of the Act. Objections were considered and after following the subsequent steps prescribed by the Act, the second respondent passed an Award on 18.3.2006, determining the compensation payable.

3. In the meantime, the respondents 4 and 5 herein filed a suit in O.S.No.417 of 2005 on the file of the Principal District Munsif Court, Tindivanam, praying for a declaration of title and for a permanent injunction. Pending suit, the respondents 4 and 5 also obtained an interim order in I.A.No.1569 of 2005 restraining the third respondent from disbursing the compensation amount till the disposal of the suit. However, the said interim order of injunction was subsequently vacated by the Civil Court on 6.12.2005. As against the said order, the respondents 4 and 5 filed an appeal in CMA No.18 of 2005. But the said appeal was disposed of by an order dated 20.4.2006, by which the vacation of the interim order of injunction by the Trial Court was upheld.

4. Thereafter, the petitioner issued a notice to the third respondent on 28.4.2006, requesting the third respondent to disburse the amount of compensation determined by him. Since the third respondent did not issue any reply or respond to the notice, the petitioner has come up with the present writ petition, seeking a Writ of Mandamus to direct the respondents 1 to 3 to disburse the compensation as per the Award dated 18.3.2006.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

5. I have heard Mr.T.R.Rajagopalan, learned senior counsel appearing for the petitioner, Mr.P.Wilson, learned Assistant Solicitor General appearing for respondents 1 and 2, Mr.V.Arun, learned Government Advocate, appearing for the third respondent and Mr.R.Subramaniam, learned counsel appearing for respondents 4 and 5.

6. Mr.T.R.Rajagopalan, learned senior counsel appearing for the petitioner contended -

> (a) that the Civil Suit filed by the respondents 4 and 5 cannot be an impediment for the disbursement of the compensation amount to the petitioner, since the suit in O.S.No.417 of 2005 for declaration of title filed on 7.11.2005 was actually not maintainable, as the lands in question vested with the Central Government by virtue of Section 3D(2) of the Act, after the publication of the declaration under Section 3D(1) in the Government of India Gazette (Extraordinary) No.432 S.O.610(E) dated 4.5.2005;
>
> (b) that in any case the interim order of injunction restraining the third respondent from disbursing the compensation amount to the petitioner, originally granted by the Trial Court in I.A.No.1569 of 2005 was subsequently vacated on 6.12.2005 and hence there was no impediment for disbursing the amount to the petitioner; and
>
> (c) that inasmuch as the respondents 3 and 4 have failed to raise any objection before the third respondent either at the time of Award enquiry or thereafter, in exercise of the right conferred under Section 3G or 3H of the Act, there is virtually no dispute in the eye of law, disabling the third respondent from making payment to the petitioner.

7. Mr.P.Wilson, learned Assistant Solicitor General appearing for respondents 1 and 2 and Mr.R.Subramaniam, learned counsel appearing for respondents 4 and 5 contended that inasmuch as there is a dispute, the third respondent will have to follow the procedure prescribed under Section 3H(4) of the Act.

8. It is no doubt true that the declaration under Section 3D(1) of the Act, was published in the Gazette of India on 4.5.2005. Therefore, the land in question actually vested with the Central Government on and from the said date by virtue of Section 3D(2) of the Act. Even a notice under Section 3G(3) inviting claims for determination of compensation was published in the English and Vernacular Dailies on 20.7.2005 and the suit in O.S.No.417 of 2005 was filed by the respondents 4 and 5 only on 7.11.2005 on the file of the District Munsif Court, Tindivanam. Therefore, the suit praying for a declaration of title and for a permanent injunction in respect of the very same property was actually not maintainable, even as against the petitioner herein. Hence, Mr.T.R.Rajagopalan, learned senior counsel for the petitioner is right in contending that the suit was not maintainable.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

9. It is also true that the interim order of injunction originally granted by the Civil Court in favour of respondents 4 and 5 also got vacated in December, 2005, removing the only impediment in the disbursement of the amount. But does it give a right to the petitioner for payment of the compensation, de hors the provisions of Section 3H(4) of the Act, is the question which has to be determined.

10. It is seen from the averments contained in the plaint filed by the respondents 4 and 5 as well as the Award passed by the third respondent, that the respondents 4 and 5 did not file any objections before the third respondent at the time of Award enquiry. There is no indication as to whether the respondents 4 and 5 raised any dispute before the third respondent with regard to their claim for compensation also. It is in that context that the learned senior counsel for the petitioner contended that the respondents 4 and 5 are not entitled to seek a reference under Section 3H(4) of the Act, after having failed to raise any objections in response to a notice under Section 3G(3) or even after the Award was passed. In order to appreciate the said contention, it is necessary to have a careful look at the provisions of Section 3G(2)(3)(4) and (5) and 3H(1)(2)(3) and (4) of the Act, which read as follows:-

> "3G. Determination of amount payable as compensation.--
>
> (1) .. ..
>
> (2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten percent of the amount determined under sub-section (1), for that land.
>
> (3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.
>
> (4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of Section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.
>
> (5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government."
>
> 3H. Deposit and payment amount.--(1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by

https://hcservices.ecourts.gov.in/hcservices/

rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated."

11. It is seen from the provisions of the Act as extracted above that the right of a person to file objections, accrues at two stages viz., (a) at the stage of Award enquiry and (b) after the Award is passed. While the right under Section 3G(3) is in respect of the quantum of compensation to be determined in the Award enquiry, the right under Section 3H(3) is in respect of the entitlement of persons to receive the amount determined under the Award.

12. Moreover, the claims invited under Section 3G(3) are from persons "interested in the land to be acquired". But the claims under Section 3H(3) are from persons "interested in the amount deposited". Therefore, there does not appear to be a prohibition for a person to make a claim for the amount of compensation, merely because he failed to participate in the Award enquiry and lodge a claim. In other words, the Act maintains distinction between "person interested in the land" and "person interested in the compensation". Hence, the right to lodge a claim for compensation or any part thereof under Section 3H(3), is not restricted only to persons who lodge a claim under Section 3G(3) of the Act. Consequently, the fact that the respondents 3 and 4 did not file any claim and did not participate in the Award enquiry, in my considered view, will not preclude them from making a claim under Section 3H(3) for the compensation or any part thereof.

13. The contention that the respondents 4 and 5 did not make any claim with the Competent Authority under Section 3H(3) of the Act and that their suit by itself, cannot be taken to be a claim under the Act, cannot be accepted. The fact that the respondents 4 and 5 filed a suit making a claim on the property, impleading the Competent Authority as a party (15th defendant), in my considered view, is sufficient for the respondents 1 to 3 to conclude that there is a claim under Section 3H(3) and that there has arisen a dispute under Section 3H(4) of the Act. The suit may be not maintainable in view of the land already having vested with the Central Government. Nevertheless, the claim made in the suit cannot cease to be a claim for property rights over compensation, merely because the suit is

https://hcservices.ecourts.gov.in/hcservices/

not maintainable. This interpretation of the provisions of Section 3G and 3H of the Act, is actually warranted as a result of one crucial fact viz., that the National Highways Act, 1956, does not prescribe any procedure for a person claiming an interest in the amount of compensation alone, for lodging his claim under Section 3H(3) or (4) of the Act. While any claim made in respect of the quantum of compensation, is by virtue of a public notice published in two Dailies under Section 3G(3) of the Act, the claim lodged under Section 3H(3) of the Act, is not in pursuance of any such notice. There is no procedure prescribed for a person to lodge a claim for payment of compensation, after the Award is passed. Therefore, in my considered view, whenever the respondents 1 to 3 come to notice that there is any claim by any person with regard to the payment of compensation, the Competent Authority is bound to follow the procedure prescribed under Section 3H(4) of the Act.

14. In this case, it has come to the notice of the Competent Authority, on account of the suit filed by the respondents 4 and 5, that "several persons claim to be interested in the amount" as required under Section 3H(3) of the Act and that "a dispute has arisen to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable" as required under Section 3H(4) of the Act. Once the existence of such a claim or dispute has come to the notice of the Competent Authority, even on account of some non-maintainable proceedings, the Competent Authority cannot close its eyes on the ground that the claim was not lodged with him. To hold that the claim or dispute should be lodged with the Competent Authority and that the Competent Authority is entitled to take a decision to refer or not, such a dispute, would amount to clothing the Competent Authority with the power to adjudicate upon the very dispute and it would defeat the purpose of Section 3H(4) of the Act.

15. The scope of reference under Section 18 and the scope of reference under Section 30 of the Land Acquisition Act, 1894 and the power of the Competent Authority under both the said provisions fell for consideration before the Supreme Court in SHARDA DEVI vs. STATE OF BIHAR ((2003) 3 SCC 128)). It is relevant to point out here that the provisions of Section 30 of the Land Acquisition Act, 1894 is almost identical with the provisions of Section 3H(4) of the National Highways Act, 1956 and hence the law laid down by the Supreme Court in the said case would squarely apply to the present case also.

16. In para-23 of the abovesaid judgment, the Supreme Court made a comparative study of the provisions of Sections 18 and 30 in the following words:-

> "23. The two provisions contemplating power of the Collector to make reference as contained in Section 18 and Section 30 of the Act need a comparative study. Under Section 18 the subject-matter of reference can be a dispute as to any one or more of the following:(i) as to the measurement of the land, (ii) as to the amount or the quantum of the compensation, (iii) as to the persons to whom the compensation is payable, and (iv) as to the apportionment of the compensation among the persons interested. Under Section 30 the subject-matter of

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

dispute can be:(i) the apportionment of the amount of compensation or any part thereof, (ii) the persons to whom the amount of compensation or any part thereof is payable."

17. The difference between the reference under Section 18 and the one under Section 30 was summarised in para-25 of the abovesaid judgment by the Apex Court as follows:-

"By reference to locus

Under Section 18(1) a reference can be made by the Collector only upon an application in writing having been made by (i)any person interested, (ii) who has not accepted the award, (iii)making application in writing, to the Collector, requiring a reference by the Collector to the Court, (iv)for determination of any one of the four disputes (specified in the provision), and (v) stating the grounds on which objection to the award is taken. For reference under Section 30 no application in writing is required. The prayer may be made orally or in writing or the reference may be made suo motu by the Collector without anyone having invited the attention of the Collector for making the reference.

By reference to the disputes referable

Under Section 18(1) there are four types of disputes which can be referred to the civil court for determination. They are disputes:(i)as to the measurement to the land, (ii)as to the amount of the compensation, (iii) as to the persons to whom the compensation is payable, or (iv)as to the apportionment of the compensation among the persons interested. Under Section 30 of the only disputes which are referable are: (i)any dispute as to the apportionment of the amount of compensation or any part thereof, or (ii)a dispute as to the persons to whom the amount of compensation or any part thereof is payable. A dispute as to the measurement of the land or as to the quantum of compensation or a dispute of a nature not falling within Section 30, can neither be referred by the Collector under Section 30 of the Act nor would the civil court acquire jurisdiction to enter into and determine the same.

By reference to the nature of power

Under Section 18 of the Act the Collector does not have power to withhold the reference. Once a written application has been made satisfying the requirements of Section 18, the Collector shall make a reference. The Collector has no discretion in the matter, whether the dispute has any merit or not is to be left for the determination of the Court. Under Section 30 of the Collector may refer such dispute to the decision of the Court. The Collector has discretion in the matter. Looking to the nature of the dispute raised, the person who is raising the dispute, the delay in inviting the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

attention of the Court, and so on -- or such illustrative factors which may enter into the consideration of the Collector while exercising the discretion. If the Collector makes the reference it may be decided by the court subject to its forming an opinion that the dispute was capable of reference and determination under Section 30 of the Act. In case the Collector refuses to make a reference under Section 30 of the Act, the person adversely affected by withholding of the reference or refusal to make the reference shall be at liberty to pursue such other remedy as may be available to him under the law such as filing a writ petition or a civil suit.

By reference to limitation

Under Section 18 the written application requiring the matter to be referred by the Collector for the determination of the court shall be filed within six weeks from the date of the Collector's award if the person making it was present or represented before the Collector at the time when he made his award or within six weeks of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire. There is no such limitation prescribed under Section 30 of the Act. The Collector may at any time, not bound by the period of limitation, exercise his power to make the reference. The expression "the person present or represented" before the Collector at the time when he made his award would include within its meaning a person who shall be deemed to be present or represented before the Collector at the time when the award is made. No one can extend the period of limitation by taking advantage of his own wrong. Though no limitation is provided for making a reference under Section 30 of the Act, needless to say, where no period of limitation for exercise of any statutory power is prescribed, the power can nevertheless be exercised only within a reasonable period; what is a reasonable period in a given case shall depend on the facts and circumstances of each case."

WEB COPY

18. Finally in para-26, the Supreme Court categorically laid down the law that the remedy of reference under Section 18 is intended to be available only to a "a person interested" and that Section 30 is not confined in its operation only to "persons interested". The following portions of para-26 of the abovesaid judgment are of significance:-

"The scheme of the Act reveals that the remedy of reference under Section 18 is intended to be available only to a "person interested".

.. ..

https://hcservices.ecourts.gov.in/hcservices/ .. ..

Section 30 is not confined in its operation only to "persons interested". It would, therefore, be available

for being invoked by the "persons interested" if they were neither present nor represented in the proceedings before the Collector, nor were served with notice under Section 12(2) of the Act or when they claim on the basis of a title coming into existence post-award. The definition of "persons interested" speaks of "an interest in compensation to be made".

19. The ratio laid down by the Supreme Court in the aforesaid case, as applicable squarely to the present case, is in the following portion of para-25 of the judgment, which is extracted at the cost of repetition:-

> "For reference under Section 30 no application in writing is required. The prayer may be made orally or in writing or the reference may be made suo motu by the Collector without anyone having invited the attention of the Collector for making the reference."

Therefore, in my considered view, the suit filed by the respondents 4 and 5 was sufficient for the Competent Authority to come to the conclusion that a dispute has arisen within the meaning of Section 3H(4) of the Act.

20. Under such circumstances, the writ petition is disposed of, with a direction to the Competent Authority to refer the dispute on the question of apportionment of the amount of compensation and the question as to who is entitled to receive the compensation in whole or in part, to the Principal Civil Court of Original Jurisdiction, in terms of Section 3H (4) of the Act, within a period of four weeks from the date of receipt or production of a copy of this order. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Svn.

WEB COPY

To

1.The Director of Planning,
National Highways Authority of
India, No.6(Old No.44),
I Floor, 3rd Main Road,
Pon Nagar,
Tiruchirappalli-620 001.

https://hcservices.ecourts.gov.in/hcservices/

2.The Competent Authority,
(Land Administration),
National Highways 45,
and District Revenue Officer,
Villupuram District.

3.The Special Tahsildar,
Land Acquisition,
No.22, Rajagopal Pillai Street,
4 Lane National Highway No.45,
Tindivanam.

+ 1 CC To Mr. T.R.Rajaraman, Advocate SR NO.2482

+ 1 CC To Mr. P.Wilson, Advocate SR NO.2742

+ 1 CC To M/s.Hema Sampath, Advocate SR NO.2836

WP No.18667 of 2006

mm[co]
gp/23.1

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/